IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

WA.No. 448 of 2006()

{IN W.P.(C)NO..4052/2005 OF THIS COURT}
.....

APPELLANT: PETITIONER:

P.M. HARIDASAN,
TEMPORARY MESSENGER-CUM-CASUAL WORKER,
STATE BANK OF INDIA,
TALIPARAMBA BRANCH.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS: RESPONDENTS:
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1. THE STATE BANK OF INDIA,
REP. BY ITS ASSISTANT GENERAL MANAGER,
SHANMUGHAM ROAD, ERNAKULAM.

2. THE CHIEF MANAGER,
STATE BANK OF INDIA, TALIPARAMBA BRANCH,
KANNUR-17.

3. THE LABOUR COURT (CENTRAL),
KOZHIKODE.

BY GOVERNMENT PLEADER
SRI.GEORGE THOMAS(MEVADA), SC, SBI

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 27/11/2006, THE COURT ON DELIVERED THE FOLLOWING:

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

W.A.No.448 of 2006 E

Dated this the 27th day of November, 2006.

JUDGMENT

Abdul Gafoor, J.

The challenge against Ext.P10 order and the prayer for regularisation of the services of the appellant were declined. Therefore, this writ appeal at the instance of the appellant/writ petitioner, who was engaged as a casual worker in the first respondent bank.

2. After the appellant having been engaged as a casual messenger in the State Bank of India, there was a termination. That was challenged alleging violation of Section 25 F of the Industrial Disputes Act, 1947. Issue was referred for adjudication by a Labour Court. The Labour Court passed an award Ext.P3 to the effect

that his termination was bad and therefore, he was entitled to reinstatement with back wages and continuity of service and attendant benefits. It was found that he was entitled to back wages at the rate of Rs.7,200/- per year. That was not implemented. This further resulted in a claim petition. The claim petition was answered in Ext.P4 by the Labour Court. The Labour court found that he will not be entitled to full wages of a regular peon-cum-messenger and other attendant benefits. There was also some observation about his entitlement for reinstatement as a permanent workman. This was challenged by the bank in O.P.No.18328/98. The said challenge resulted in Ext.P5 judgment of a learned

single Judge, wherein Ext.P4 was set aside and the matter was remitted back to the Labour Court for computing the wages payable to the appellant. The appellant carried the matter in an appeal. The appeal was allowed as per Ext.P6. It was found by the Division Bench that there was no reason at all for remitting the matter back to the Labour Court again because, in Ext.P3 the Labour Court had found that he was entitled to back wages for the period during which he was out of employment. But, it was made clear that on such reinstatement, the petitioner will be entitled to ask for all the benefits as he may be entitled on the basis of the circular or law applicable, as the case may be, depending upon his continuity in the service. It was so

ordered in Ext.P6 judgment of a Division Bench. Consequent to Ext.P6, the appellant/petitioner raised a claim for salary as applicable to permanent workman. That was answered in Ext.P10 to the effect that, as he was engaged purely on a temporary basis as a casual worker-cum-messenger and his entitlement for reinstatement is to the very same post, he could not be absorbed as a permanent workman and he was not entitled to the scale of pay claimed by him. It was in the above circumstances he challenged Ext.P10 and sought for a direction to regularise him.

3. An employee who was appointed on a casual basis cannot claim regularisation, unless there is any order or circular in that regard. Such a

circular or order is not pointed out to us. In such circumstances, based on the decision reported in ***Secretary, State of Karnataka & Others v. Uma Devi (3) & others{2006(4) S.C.C. 1}***, we cannot direct regularisation of an employee in a public sector undertaking like the first respondent bank. At the same time, the appellant is justified in seeking a declaration that payment of daily wages at the rate of Rs.30/- since his initial engagement from 1.7.1985 till now is unfair. In the impugned judgment, the learned single Judge seems to have not adverted to this aspect. There were several wage revisions including that contained in Exts.P11 and P12 in respect of the regular bank employees. In such circumstances, a pro rata increase shall

also be made available to the casual workers like the appellant/petitioner.

Accordingly, allowing the writ appeal in part, we direct the first respondent to provide a pro rata increase in the daily wages of the petitioner, depending upon the revisions made at different times. Appropriate orders shall be passed and payment shall be effected within 3 months. The petitioner will be free to approach the authorities concerned seeking regularisation based on any order or statute or or settlement, if any in that regard.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(K.R.UDAYABHANU)
JUDGE

sk/

//true copy//

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

W.A.No.448 of 2006 E

JUDGMENT

27th November, 2006.